

further provides that the damage to or loss or destruction of property shall not have been caused in whole or in part by any negligence or wrongful act on the part of the claimant, his agent or employee; that no claim shall be settled under the act unless presented in writing within one year after the incident out of which such claim arises shall have occurred except that if the incident occurs in time of war, or if war intervenes within one year after its occurrence, any claim may, on good cause shown, be presented within one year after peace is established. The Secretary of the Army is authorized to report such claims as exceed \$1,000 to Congress for its consideration.

**§ 211.16 Scope and application of Army Regulations.**

(a) AR (Army Regulations) 25-25 has been issued in furtherance of the act of July 3, 1943. The regulations in this part, in keeping with the terms of the act, apply to claims for damages only. Paragraph 7 of AR 25-25 provides that claims for damages to real property incident to the use and occupancy thereof by the government under a lease express or implied, or otherwise, are payable under this section even though legally enforceable against the Government as contract claims. However, if deemed preferable in the best interest of the Government claims payable under paragraph 7 may be processed to the General Accounting Office for direct settlement under sec. 236, Revised Statutes. Claims for rent of real property are not payable under AR 25-25.

(b) AR 100-64 has been issued in furtherance of Section 236, Revised Statutes, as amended by the act of June 10, 1921; 42 Stat. 24, 31 U.S.C. 71. These regulations provide exclusive authority for the consideration and settlement of claims for rent and other payments of an express or implied contractual nature, and optional authority with AR 25-25 for settlement of damages, in excess of \$1,000 arising out of the use and occupancy of real estate by the Department of the Army or the Army under an agreement expressed or implied. AR 100-64 applies to all claims for rent regardless of amount and for other payments of a contractual nature, for example, claims for electricity, heat,

light, water, and other out-of-pocket expenses, repairs, etc., where such expenses are not included in the lease as a part of the rental consideration.

**§ 211.17 Authority of Division Engineers, Corps of Engineers to settle claims.**

(a) Authority has been delegated to Division Engineers, within the geographical limits of their respective jurisdictions, to approve or disapprove, in amounts not exceeding \$1,000, any claim within the purview of the act of July 3, 1943, as amended. Insofar as real estate claims are concerned this delegation of authority applies only to claims for damages incident to the use and occupancy of real property by the Department of the Army or the Army.

(b) Division Engineers have no authority to settle and make payment of claims for damages in excess of \$1,000 or for rents or other payments of a contractual nature regardless of amount arising out of the use and occupation of real estate under an agreement, express or implied, or otherwise.

**§ 211.18 Action by claimant.**

Real estate claims may be presented by the owner of the property or his duly authorized agent or legal representative. The word "owner", as so used, includes lessees, mortgagors, and conditional vendees, but does not include mortgagees, conditional vendors, and others having title for purposes of security only. The claim, if filed by an agent or legal representative, should show the title of the person signing and be accompanied by evidence of the appointment of such person as agent, executor, administrator, guardian, or other fiduciary.

**§ 211.19 Place of filing claims.**

All real estate claims should be submitted to the United States Division Engineer in whose jurisdiction the claim arises.

**§ 211.20 Form of claim.**

Claims should be submitted by presenting in triplicate a signed statement, giving the claimant's address, setting forth the amount of the claim, and, so far as possible, the detailed facts and circumstances giving rise to

## **§211.21**

the claim, indicating and describing the property involved, the date or dates, and the nature and extent of the damage, loss or destruction claimed, and the agency or branch of the Department of the Army or Army using the property. Upon receipt of such a claim the Division Engineer will, where practicable or necessary, furnish the claimant with Department of the Army forms for a more formal presentation of his claim including instructions as to their use.

### **§211.21 Evidence to be submitted by claimant.**

(a) All claims must be substantiated by competent evidence. If the claim is for rent or other payment the claimant should furnish evidence as to the value of the property, income from the property if previously rented, or rental value of similar property in the vicinity. If the property is under a formal lease to the Government, the claimant should identify the lease and state the covenants of the lease upon which he predicates his claim. Where the claim is for damage to the property which has been or can be economically repaired the claimant should submit in triplicate an itemized signed statement or estimate of the cost of repairs and copies of itemized receipts, evidencing payment for any expenditures made in relation to the property for which reimbursement is claimed.

(b) In support of claims for damage to crops the claimant should submit a statement showing the number of acres, or other unit measure of crops damaged, the normal yield per unit, the gross amount which would have been realized from normal yield, and an estimate of the further cost of cultivation, harvesting and marketing; if the crops are one which need not be planted each year, the diminution in value of the land beyond the damage to the current year's crop should also be stated. All such statements or estimates should, if possible, be by disinterested competent witnesses, preferably responsible dealers of the type of property damaged.

### **§211.22 Real estate Claims Officers.**

In each Division Office the Division Engineer has appointed a Claims Offi-

## **33 CFR Ch. II (7-1-07 Edition)**

cer or Assistant Claims Officers who have the duty and responsibility under the direction of the Division Real Estate Officer, to investigate all real estate claims. The activities and responsibilities of these Claims Officers are described more fully under §211.23.

### **§211.23 Procedure.**

Upon the receipt of any real estate claim it is submitted to a Claims Officer who investigates the matter and secures all evidence necessary for a full consideration of the claim and upon which a determination can be made as to the liability of the Government. For this purpose the Claims Officer is authorized and charged with the duty of securing sufficient evidence to establish with certainty the following general points:

- (a) The nature of the claim.
- (b) The interest of the claimant in the property and the interest that others may have in the property.
- (c) Date and circumstances under which occupation of premises occurred and date of vacation. If under a lease, the lease number and date of lease.
- (d) Inspection of the premises and determination of the amount of damages.
- (e) If claim is for rental without formal lease or agreement, data as to the market and rental value of the property.
- (f) Any other pertinent evidence the particular facts of the case require.

The above obligations of the Claims Officer does not relieve the claimant from the burden of proving his claim and it is the duty and obligation of the claimant to furnish such evidence within his particular knowledge as the Claims Officer may require.

Upon completion of his investigation the Claims Officer prepares a report setting forth completely but briefly the nature and amount of the claim, all pertinent facts necessary to determine the rights and liabilities of the claimant and the Government, and the Claims Officer's conclusions and recommendations as to allowance or disallowance of the claim in whole or in part and reasons therefor, including citations to any laws, statutes, or other decisions which it is believed will substantiate his recommendation.